

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LARRY FORSYTHE,

Plaintiff,

vs.

JUDGE DEBORAH LIPPIS, et al.,

Defendants.

Case No. 2:11-CV-00498-JCM-(PAL)

ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted an application to proceed in forma pauperis (#1), a civil rights complaint pursuant to 42 U.S.C. § 1983, a letter that the court construes as a motion to amend the complaint (#3), and a amended complaint. The court finds that plaintiff is unable to pay an initial partial filing fee. 28 U.S.C. § 1915(b)(4). Plaintiff must still pay the filing fee in full through monthly installment payments. 28 U.S.C. § 1915(b)(2).

The court will grant plaintiff leave to amend the complaint. Furthermore, the court has reviewed the amended complaint, and the court will dismiss this action. When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Allegations of a pro se

1 complainant are held to less stringent standards than formal pleadings drafted by lawyers. Haines v.
 2 Kerner, 404 U.S. 519, 520 (1972) (per curiam).

3 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and
 4 plain statement of the claim showing that the pleader is entitled to relief.” . . . [T]he
 5 pleading standard Rule 8 announces does not require “detailed factual allegations,”
 6 but it demands more than an unadorned, the-defendant-unlawfully-harmed-me
 accusation. A pleading that offers “labels and conclusions” or “a formulaic recitation
 of the elements of a cause of action will not do.” Nor does a complaint suffice if it
 tenders “naked assertion[s]” devoid of “further factual enhancement.” . . .

7 [A] complaint must contain sufficient factual matter, accepted as true, to “state a
 8 claim to relief that is plausible on its face.” A claim has facial plausibility when the
 9 plaintiff pleads factual content that allows the court to draw the reasonable inference
 10 that the defendant is liable for the misconduct alleged. The plausibility standard is
 11 not akin to a “probability requirement,” but it asks for more than a sheer possibility
 that a defendant has acted unlawfully. Where a complaint pleads facts that are
 “merely consistent with” a defendant’s liability, it “stops short of the line between
 possibility and plausibility of ‘entitlement to relief.’”

12 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

13 This action arises out of a criminal prosecution of plaintiff in the Eighth Judicial
 14 District Court for escape. Plaintiff was convicted, and he is in custody pursuant to that conviction.

15 Plaintiff has sued the State of Nevada and the Eighth Judicial District Court of the
 16 State of Nevada. Section 1983 states, in relevant part:

17 Every person who, under color of any statute, ordinance, regulation, custom, or
 18 usage, of any State or Territory or the District of Columbia, subjects, or causes to be
 19 subjected, any citizen of the United States or other person within the jurisdiction
 20 thereof to the deprivation of any rights, privileges, or immunities secured by the
 Constitution and laws, shall be liable to the party injured in an action at law, suit in
 equity, or other proper proceeding for redress (emphasis added)

21 “[N]either a State nor its officials acting in their official capacities are ‘persons’ under § 1983.”

22 Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). The same rule applies to agencies
 23 that are arms of the state, such as the Nevada Department of Corrections. Doe v. Lawrence
 24 Livermore Nat. Laboratory, 131 F.3d 836 (9th Cir. 1997). Consequently, neither the State of
 25 Nevada nor the Eighth Judicial District Court are proper defendants in this action.¹

26
 27 ¹Plaintiff argues that the state has waived immunity pursuant to Nev. Rev. Stat. § 41.031, but
 28 that argument is irrelevant. Regardless of immunity, a state and its arms are not proper defendants

1 Defendant Thom Gover was the prosecutor in plaintiff's criminal action. Plaintiff's
2 allegations regarding defendant Gover all relate to his actions taken as a prosecutor. Defendant
3 Gover is absolutely immune from monetary damages for the actions that he takes as a prosecutor.
4 Imbler v. Pachtman, 424 U.S. 409, 430 (1976).

5 Defendants Dianne Dickson and Melissa Navarro were deputy public defenders who
6 either represented plaintiff in his criminal action or acted as standby counsel while plaintiff
7 represented himself. For the purposes of § 1983, public defenders are private individuals who do
8 not act under color of state law when they represent criminal defendants. Polk County v. Dodson,
9 454 U.S. 312, 325 (1981). Plaintiff states that these defendants collaborated or conspired with
10 defendant Gover, but he does not allege any facts that could show a plausible conspiracy. See Iqbal,
11 129 S. Ct. at 1949. Instead, all that he alleges are the normal actions that a lawyer would take while
12 representing a defendant or acting as a standby counsel for a defendant.

13 Defendant Deborah Lippis was the justice of the peace who presided over
14 preliminary matters in plaintiff's criminal case, and defendant Jackie Glass was the district judge
15 who presided over the prosecution of plaintiff. Plaintiff's allegations against these defendants
16 describe only the actions that they took as judges. As such, defendants Lippis and Glass are
17 absolutely immune from monetary damages. Mireles v. Waco, 502 U.S. 9, 11-13 (1991). See also
18 Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam).

19 Regardless of the status of any defendant, plaintiff may not proceed with this action
20 because his judgment of conviction is still in effect. Plaintiff seeks monetary damages for every day
21 that he has been falsely imprisoned pursuant to the judgment of conviction for escape. "[T]o
22 recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm
23 caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983
24 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by
25 executive order, declared invalid by a state tribunal authorized to make such determination, or called
26 into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S.

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28 in a civil rights action pursuant to 42 U.S.C. § 1983.

1 477, 486-87 (1994). See also Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).
2 Plaintiff's judgment of conviction has not been overturned, and thus he cannot recover damages.

3 IT IS THEREFORE ORDERED that plaintiff's application to proceed in forma
4 pauperis (#1) is **GRANTED**. Plaintiff shall not be required to pay an initial partial filing fee.
5 However, even if this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C.
6 § 1915(b)(2).

7 IT IS FURTHER ORDERED that the movant herein is permitted to maintain this
8 action to conclusion without the necessity of prepayment of any additional fees or costs or the
9 giving of security therefor. This order granting leave to proceed in forma pauperis shall not extend
10 to the issuance of subpoenas at government expense.


11 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada
12 Department of Corrections shall pay to the Clerk of the United States District Court, District of
13 Nevada, 20% of the preceding month's deposits to plaintiff's account (inmate #1024861), in the
14 months that the account exceeds \$10.00, until the full \$350 filing fee has been paid for this action.
15 The clerk shall send a copy of this order to the finance division of the clerk's office. The clerk shall
16 also send a copy of this order to the attention of the chief of inmate services for the Nevada
17 Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

18 IT IS FURTHER ORDERED that the clerk of the court shall file the civil rights
19 complaint pursuant to 42 U.S.C. § 1983.

20 IT IS FURTHER ORDERED that plaintiff's motion for leave to amend his
21 complaint (#3) is **GRANTED**. The clerk of the court shall file the amended complaint.

22 IT IS FURTHER ORDERED that this action is **DISMISSED** for failure to state a
23 claim upon which relief can be granted. The clerk of the court shall enter judgment accordingly.

24 DATED: June 10, 2011.

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26 
27 JAMES C. MAHAN
28 United States District Judge